

Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 East 42nd Street, Suite 2540
New York, New York 10165

Telephone: (212) 317-1200
Facsimile: (212) 317-1620

rgutierrez@faillacelaw.com

November 30, 2015

By ECF

Hon. Alison J. Nathan
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: Valentin Tapia, et al. v. BLCH 3rd Ave. LLC, et al.
U.S.D.C., S.D.N.Y. Index No. 14 CV 8529 (AJN)

Dear Judge Nathan:

We represent the Plaintiffs in the above-referenced matter. Plaintiffs write this letter pursuant to Your Honor's Order dated November 23, 2015, requesting that the parties confer and submit the JPTO by today. I write to inform the Court about why the parties have not yet filed the JPTO. Plaintiffs submit this letter without the Defendants' input.

After receiving Your Honor's Order dated November 23, 2015, I emailed Mr. Kaushik a word copy of the proposed JPTO that plaintiffs filed in this matter. As it was near the holiday weekend I requested that Mr. Kaushik please get his revisions back to me by midday on Wednesday November 25, 2015 so that we would have enough time to continue revising as necessary before today. Mr. Kaushik indicated that he would get all the pretrial submissions in by today.

I did not receive a revised version of the JPTO in this case until this morning. However, Mr. Kaushik emailed me only a PDF copy which I have not been able to convert and revise accordingly. I then asked Mr. Kaushik to please send me the word version, but he was unable to do so. I have attached the latest JPTO pdf version hereto as Exhibit A.

I have not filed the attached version as our joint work product because we have not been able to confer on several outstanding matters. The primary matter being that Mr. Kaushik appears to now be requesting a trial by jury. I ask the Court to please deny this request as our Case Management Plan and Scheduling Order explicitly states that this case is not to be conducted in front of jury. Dkt. No. 21. Moreover, Mr. Kaushik did not request a trial by jury within 14 days of the filing the last pleading in this matter. As such, Defendants have waived their right to trial by jury. Fed. R. Civ. P. 38(b)-(d).

Other outstanding issues that remain to be resolved in the JPTO relate to whether we consent to conducting the trial in front of a Magistrate Judge, the admissibility of evidence that Mr. Kaushik is seeking to introduce, as well as which matters of fact and law he is and is not willing to stipulate to. As these issues are still unresolved, I have not filed the version Mr. Kaushik emailed me as a final version of our efforts in this matter. I have attached it for your review but do not adopt it as indicative of Plaintiffs' position in this case.

Finally, Defendants have repeatedly been noncompliant with the Court's Orders. Defendants have yet to file or turn over their pretrial submissions and trial affidavits after having been ordered to do so multiple times and without providing a satisfactory explanation. Additionally, Defendants have now had the advantage of Plaintiffs' pretrial submissions for more than one week. In light of the foregoing, I respectfully request that the Court preclude the Defendants' testimony at trial.

Thank you for the Court's attention to this matter.

Respectfully Submitted,

/s/ Raquel A. Gutiérrez
Raquel A. Gutiérrez

cc: Nitin Kaushik, Esq. (via ECF)